STATE OF MICHIGAN

COURT OF APPEALS

JANSEN, FURGASON & VALK, PC,

Petitioner-Appellee,

V

DEPARTMENT OF TREASURY,

Respondent-Appellant.

UNPUBLISHED
March 6, 2003

No. 234316
Tax Tribunal
LC No. 00-263830

Before: Donofrio, P.J., and Saad and Owens, JJ.

PER CURIAM.

Respondent appeals as of right the Tax Tribunal's order reducing the department's assessments against petitioner under the Single Business Tax Act (SBTA), MCL 208.1 *et seq*. We affirm.

As an initial matter, we note that our review of Tax Tribunal decisions is "very limited." *Michigan Milk Producers v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). Absent a claim of fraud, we can determine only whether the tribunal committed an error of law or adopted a wrong legal principle. *Id.* at 490. Also, the tribunal's factual findings will not be disturbed if they "are supported by competent, material, and substantial evidence on the whole record." *Id.* at 490-491.

Respondent contends the tribunal erred in ruling that petitioner could file an amended 1994 Single Business Tax ("SBT") return to create a tax liability or to adopt a new calculation method. To the extent that this issue involves statutory interpretation, we review it de novo. *Michigan Milk Producers, supra* at 491. In *Michigan Milk Producers,* we further noted:

> The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature as discerned from the language in the statute. Statutory language must be read according to its ordinary and generally accepted meaning. If the language of the statute is clear and unambiguous, judicial construction is neither permitted nor appropriate. This Court will generally defer to the Tax Tribunal's interpretation of a statute that it is charged with administering and enforcing. [*Id.* at 491 (citations omitted).]

We review de novo conclusions of law. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Here, respondent cites no authority establishing that the tribunal's ruling was legally erroneous. Moreover, we note that our Legislature has expressly prohibited the adoption of a different calculation method when filing an amended city income tax return in certain circumstances, MCL 141.646. In contrast, our Legislature did not include a similar requirement for amended SBT returns. See generally MCL 208.1 *et seq.* Thus, we are not persuaded that our Legislature intended to prohibit a person or entity from adopting a different calculation method when filing an amended SBT return. In the absence of any authority indicating that the Tax Tribunal's ruling was legally erroneous, we defer to the tribunal's interpretation of the SBTA. *Michigan Milk Producers, supra* at 490-491. Consequently, we reject defendant's contention of error.

Next, respondent contends that the tribunal erred in concluding that country club dues petitioner paid to its president, Robert Jansen, did not constitute compensation under MCL 208.4(3). Generally, the SBTA, MCL 208.1 *et seq.*, imposes a tax on the adjusted tax base of persons performing business activity in Michigan. Taxpayers may take a credit against this tax, provided they meet certain requirements, including that compensation and director's fees paid to a shareholder or officer do not exceed $95,000 for the tax year, under the guidelines in effect during the tax years at issue in this case. MCL 208.36(2)(b)(*i*). Here, if the country club dues constituted compensation to Jansen, the $95,000 limit was exceeded. If so, petitioner's assessment should not have been reduced.

For all relevant years, the SBTA defined "compensation" to mean "all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of employees, officers, or directors of the taxpayers and subject to or specifically exempt from withholding under chapter 24, sections 3401 to 3406 of the internal revenue code . . . ." MCL 208.4(3).[1] The provision lists specific examples and exemptions, none of which apply to country club dues. MCL 208.4(3).

Respondent contends the tribunal erred in relying on the federal definition of compensation, claiming the federal treatment of the country club dues was irrelevant to its state treatment. However, as noted above, the SBTA explicitly requires the amounts be "subject to or specifically exempt from withholding under chapter 24, sections 3401 to 3406 of the internal revenue code." MCL 208.4(3). Thus, federal tax treatment of the country club dues was relevant.

Section 3401 defines wages as "all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration (including benefits) paid in any medium other than cash . . . ." 26 USC 3401(a). The provision then specifies exceptions to this definition, none of which apply in this case. 26

[1] The statute was amended by 1999 PA 115 to state: "Compensation includes, *but is not limited to*, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code" (emphasis added).

USC 3401(a). Therefore, under the plain meaning of this language, country club dues paid to an employee in exchange for services performed could qualify as wages.

However, petitioner contended below that it did not provide the country club membership to Jansen in exchange for his services. In fact, petitioner even amended its state and federal tax returns to reflect that position. Respondent offered no evidence to contradict that claim. In other words, the evidence only indicated that petitioner did not provide the club membership as remuneration to Jansen. Thus, as a factual matter, we are not persuaded that the dues were wages under 26 USC 3401(a). *Michigan Milk Producers, supra* at 490-491. Further, the dues were not "subject to or specifically exempt from withholding" under the other sections referenced in MCL 208.4(3). Consequently, the Tax Tribunal did not err in concluding the dues were not compensation. *Michigan Milk Producers, supra* at 490-491.

Accordingly, respondent could reject petitioner's return only if it failed to meet the usual requirements for an amended tax return, and respondent did not assert it was deficient on these grounds. Petitioner used a proper calculation method in its amended return. Further, nothing indicates that petitioner failed to provide sufficient information for an accurate determination of the amount of tax due, MCL 205.21; filed a fraudulent claim, MCL 205.23; or filed its amended return beyond the statute of limitations, MCL 205.27a(2). Consequently, we are not persuaded that the tribunal erred as a matter of law in ruling that respondent wrongfully rejected petitioner's amended return. *Michigan Milk Producers, supra* at 490-491.

Affirmed.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Donald S. Owens